

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0300P**

Withholding Tax
For the Period March 31, 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; IC 6-3-4-8.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed for failure to remit its withholding tax due by the due date of its return.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the assessment of interest.

STATEMENT OF FACTS

The taxpayer filed its monthly withholding tax return for the month ending March 31, 2005 after the due date. The calculated amount of tax due was remitted with the return. Accordingly, the department assessed a penalty for the taxpayer's failure to timely remit its tax. In his letter of protest, the taxpayer's representative requested that the penalty be abated due to reasonable cause.

I. Tax Administration – Penalty

The return in question was due on April 20, 2005. The taxpayer asserts that it filed its return and remitted its tax late because it "inadvertently did not get it (the return) in the mail until April 21, 2005." The taxpayer requests that the department reconsider the imposition of penalty because it regularly pays its taxes in a timely manner. The department does not consider this to be reasonable cause.

IC 6-3-4-8.1 states in relevant part:

Sec. 8.1. (a) Any entity that is required to file a monthly return and make a monthly remittance of taxes under sections 8, 12, 13, and 15 of this chapter shall file those returns and make those remittances twenty (20) days (rather than thirty (30) days) after the end of each month for which those returns and remittances are filed, if that entity's average monthly remittance for the immediately preceding calendar year exceeds one thousand dollars (\$1,000).

(b) The department may require any entity to make the entity's monthly remittance and file the entity's monthly return twenty (20) days (rather than thirty (30) days) after the end of each month for which a return and payment are made if the department estimates that the entity's average monthly payment for the current calendar year will exceed one thousand dollars (\$1,000).

The statute does not provide for any leniency based upon a taxpayer's superior filing history.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer has not established that its failure to timely file the return in question and pay the appropriate tax was due to reasonable cause and not due to negligence.

FINDING

The taxpayer's protest is denied.

II. Tax Administration – Interest

The taxpayer requests that the department waive the imposition of interest. According to IC 6-8.1-10-1(e), the department does not have the authority to waive the interest on tax liabilities.

FINDING

The taxpayer's protest is denied.